

No. 5:08-CR-00360-F-1
No. 5:16-CV-00205-F

Respondent.

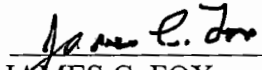
ORDER

Citing *United States v. Gardner*, No. 14-4533, 2016 WL 2893881 (4th Cir. 2016), Respondent concedes that Carmichael's prior North Carolina convictions for common law robbery are no longer violent felonies for ACCA purposes. Resp. [DE-52] at 2. Thus, Carmichael lacks the three ACCA predicates to be sentenced as an armed career criminal under 18 U.S.C. § 924(e). *Id.* The Government waives reliance on any procedural defenses and requests that this court vacate Carmichael's sentence and hold a resentencing hearing. *Id.*

In light of the foregoing, including the Government's concessions, Carmichael's Motion to Vacate [DE-41, -44, -47] is ALLOWED. Carmichael's October 13, 2009 Judgment [DE-23] of conviction and sentence hereby is VACATED, and he is to be promptly resentenced without the § 924(e) enhancement.

SO ORDERED.

This, the 27th day of July, 2016.



JAMES C. FOX
Senior United States District Judge